

**TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 41. PROFESSIONAL FIDUCIARIES BUREAU**

Article 2. Application and Licensure

§ 4422. Application.

(a) A person applying for a license as a professional fiduciary shall submit an application for licensure to the Bureau and pay the application fee required in Section 4580.

(b) An application for licensure shall require the applicant to meet the qualifications of Section 6533 of the Business and Professions Code and, in addition, provide the following information:

(1) For a determination of compliance with the education requirements under subdivision (g) of Section 6533, if applicable, the applicant shall provide the names of the universities or colleges, the dates of graduation, and the applicable degrees awarded.

(2) For a determination of compliance with the experience requirements under subdivision (g) of Section 6533, if applicable, the applicant shall provide information regarding the qualifying substantive fiduciary responsibilities, including type and dates of experience, and contact information for three references, and shall provide consent for the Bureau to contact the references for verification of specified experience.

(3) The applicant's physical business address, telephone number, and facsimile number.

(4) The applicant's designated address of record for public information.

(5) A list of any license or professional certificate ever held by the applicant, including information regarding the type, state/country, license or certificate number, date issued, status, and whether the license or certificate has been subject to disciplinary action, including revocation or suspension. The applicant may attach a statement of explanation.

(6) Whether the applicant has filed for bankruptcy in the last ten (10) years or held a controlling financial interest in a business when that business filed for bankruptcy in the last ten (10) years, as required by paragraph (7) of subdivision (a) of Section 6534, and the date of the bankruptcy filing. The applicant may attach a statement of explanation.

(7) Whether the applicant has ever been convicted of a crime. The applicant may attach a statement of explanation.

(8) Whether the applicant has ever been found by a court to have breached a fiduciary duty, the date, case name, court location, and case number associated with each breach of fiduciary duty. The applicant shall submit a record of the court findings and orders related to each specific case. The applicant may file an additional statement of the issues and facts pertaining to each case.

(9) Whether the applicant has ever been removed as a fiduciary by a court for breach of trust, the date, case name, court location, and case number associated with each removal. Whether all related appeals have been taken or the time to file an appeal has expired. The applicant shall submit a record of the court findings and orders related to each specific case. The applicant may file an additional statement of the issues and facts pertaining to each case.

(10) Whether the applicant has ever resigned as a fiduciary in a matter in which a complaint has been filed with the court, the date the complaint was filed, the date of the resignation, case name, court location, and case number associated with each resignation, and a statement of the issues and facts pertaining to each allegation. The applicant shall submit a record of the court findings and orders related to each specific case.

(11) Whether the applicant has ever settled as a fiduciary in a matter in which a complaint has been filed with the court, the date the complaint was filed, the date of the settlement, case name, court location, and case number associated with each settlement, and a statement of the issues and facts pertaining to each allegation. The applicant shall submit a record of the court findings and orders related to each specific case.

(c) As used in this section “complaint” means a civil complaint, a petition, motion, objection, or other pleading filed with the court against the **licensee applicant** alleging the licensee has not properly performed the duties of a fiduciary.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 6533, 6534, 6536, 6538, 6539, and 6561, Business and Professions Code.

Article 3. Prelicensing and Continuing Education

§ 4440. Prelicensing Education Requirements.

To qualify for licensure under the Act an applicant shall complete thirty (30) hours of prelicensing education credit subject to the conditions of this Article. **The prelicensing education credit shall be earned from education courses completed within five (5) years preceding the submission of the application that are approved education courses pursuant to Section 4444. The following courses shall qualify for prelicensing education credit:**

~~(a) Any education course taken on or after January 1, 2007, that meets the requirements of an approved education course under Section 4444.~~

~~(b) Any fiduciary management course taken from the California State University, Fullerton, Extended Education Program.~~

~~(c) Any education course taken on or after January 1, 2007, to satisfy the continuing education requirements of Rule 7.1010 and 7.1060 of the California Rules of Court~~

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Section 6538, Business and Professions Code.

Article 4. Code of Ethics

Section 4470. General Principles.

(a) A licensee’s fiduciary duties recognized under this Article are based upon the fiduciary relationship established with the consumer as follows:

(1) A licensee’s relationship to a conservatee when acting as a court appointed conservator;

(2) A licensee’s relationship to a ward when acting as a court appointed guardian;

(3) A licensee’s relationship to a principal when acting under a durable power of attorney; and,

(4) A licensee’s relationship to a beneficiary when acting as a trustee.

(b) The licensee shall comply with all local, state, and federal laws and regulations, and requirements developed by the courts and the Judicial Council as a minimum guide for the fulfillment of the fiduciary duties recognized under this Article.

(c) The licensee shall protect all rights of the consumer that relate to licensee's fiduciary duties to the consumer.

(d) The licensee shall refrain from representing the consumer in areas outside the scope of legal authority.

(e) The licensee shall seek competent professional advice whenever appropriate for the benefit of the consumer.

(f) Consistent with the licensee's fiduciary duties, the licensee shall provide for services to the consumer, to the extent they are appropriate and reasonable based upon the needs of the consumer, that are in the best interest of the consumer.

*NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. **Reference:** Section 6520, Business and Professions Code.*

Section 4482. Management of the Estate.

(a) The licensee shall protect the assets of the estate.

(b) The licensee shall pursue claims against others when it reasonably appears to be in the best interest of the consumer or the estate to do so.

(c) The licensee shall defend against actions or claims against the estate when it reasonably appears to be in the best interest of the consumer or the estate to do so.

(d) The licensee may incur expenses that are appropriate to the estate, in relation to the assets, overall investment strategy, purpose, and other relevant information and circumstances when investing and managing estate assets.

(e) Consistent with the licensee's fiduciary duties, the licensee shall manage the assets of the estate in the best interest of the consumer.

(f) The licensee shall manage the estate with prudence, care and judgment, maintaining detailed fiduciary records as required by law.

(g) Consistent with the licensee's fiduciary duties, any expense incurred by the licensee for care, treatment or services, or for the management of the estate, shall be reasonable for the service provided, unless the expense incurred is less than what would be considered reasonable.

*NOTE: Authority cited: Sections 6517 and 6520, Business and Professions Code. **Reference:** Section 6520, Business and Professions Code.*

Article 7. Reporting Duties of Licensee

§ 4544. Ongoing Reporting Duties.

(a) A licensee has a duty to report the following information to the Bureau within fifteen (15) business days of the following occurrences:

(1) Any change to addresses and telephone numbers for the licensee's place of business or place of residence.

(2) If the licensee is removed as a fiduciary by the court for breach of trust, the date, case name, court location, and case number associated with the removal. The licensee shall submit a record of the court findings and orders related to the case. The licensee may file an additional statement of the issues and facts of the case.

(3) If the licensee files for bankruptcy or holds a controlling financial interest in a business that files for bankruptcy.

(b) Each licensee shall report any information that is required to be reported on the annual statement, as specified in Section 4542, or that is otherwise authorized by the Act or regulation as specifically requested by the Bureau, or provide any information for verification of compliance with any item that is required to be reported on the annual statement or that is authorized by the Act or regulation as requested by the Bureau to the Bureau within ten (10) business days of the request or later as specified. Compliance with this subdivision shall be in addition to compliance with the reporting requirements in subdivision (a).

(c) Reporting requirements pursuant to this Section shall be in addition to the annual reporting duties of Section 4540 or any other provision of law.

(d) A licensee may be subject to cite or fine or disciplinary action for failure to comply with this Section.

NOTE: Authority cited: Section 6517, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 6534, 6536, 6560, and 6561, Business and Professions Code.

Article 10. Citations

§ 4600. Authority to Issue Citations; Citation Format.

(a) The Bureau is authorized to issue citations containing orders of abatement and/or administrative fines pursuant to Sections 125.9 or 148 of the Business and Professions Code against a professional fiduciary or an unlicensed person who has committed any acts or omissions which are in violation of the Act or the regulations contained in this Division.

(b) A citation shall be issued whenever any order of abatement is issued or any fine is levied. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statutes or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

(c) Each citation issued shall inform the cited person that, if he or she desires a hearing to contest the finding of a violation, that a hearing shall be requested by written notice to the Bureau within thirty (30) days of the issuance of the citation or assessment.

NOTE: Authority Cited: Sections 125.9, 148, and 6517, Business and Professions Code. Reference: Sections 125.9, 148, 6580, and 6583, Business and Professions Code.

§ 4602. Administrative Fines for Citations.

(a) Where citations issued pursuant to Section 4600 of this Article include an assessment of an administrative fine, the fine shall be up to \$5,000 for each violation.

(b) The Bureau shall consider the factors specified in Section 4604 when determining the amount of the administrative fine.

NOTE: Authority cited: Sections 125.9, 148, and 6517, Business and Professions Code.
Reference: Sections 125.9, 148, 6580, and 6583, Business and Professions Code.

§ 4604. Citation Factors.

(a) The following factors shall be considered when determining the amount of an administrative fine:

(1) The good or bad faith exhibited by the cited person.

(2) The nature and severity of the violation.

(3) Evidence that the violation was willful or not.

(4) History of previous violations.

(5) The extent to which the cited person has cooperated with the Bureau.

(6) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation.

(7) Extenuating circumstances as justice may require.

(b) For the issuance of a citation that includes an administrative fine in excess of \$2,500, the Bureau shall determine that at least one of the following circumstances apply:

(1) The citation involves a violation that presents an immediate threat to the health, safety, or welfare of another person.

(2) The citation involves multiple violations of the Act or these regulations that demonstrate a willful disregard of the law.

(3) The cited person has a history of two or more prior citations of the same or similar violation.

(4) The violation involves unlicensed activity.

(5) The citation involves a violation or violations perpetrated against a minor, or an elder or dependent adult, or a person with a physical or mental disability as defined in Section 12926 of the Government Code.

(c) The sanctions authorized under this section shall be separate from, and in addition to, any other civil or criminal remedy.

NOTE: Authority cited: Sections 125.9, 148, and 6517, Business and Professions Code.
Reference: Sections 125.9, 148, 6580, and 6583, Business and Professions Code.

§ 4606. Contest of Citations; Informal Conference.

(a) In addition to requesting an administrative hearing as provided for in subdivision (b)(4) of Section 125.9 of the Business and Professions Code, the cited person may request an informal conference to review the acts charged in the citation. A request for an informal conference shall be made in writing, within ten (10) days after the citation has been served or received.

(b) The Bureau shall hold, within sixty (60) days from the receipt of the request, an informal conference with the cited person. At the conclusion of the informal conference, the Bureau may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The Bureau shall state in writing the reasons for the action and transmit a copy of the findings and decision to the cited person. The decision shall be deemed to be a

final order with regard to the citation issued, including any administrative fine levied or order of abatement.

(c) If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If the cited person desires a hearing to contest the new citation, he or she shall make a request in writing, within thirty (30) days of receipt of the informal conference decision, to the Bureau. The hearing shall be conducted as provided for in subdivision (b)(4) of Section 125.9. A cited person may not request an informal conference for a citation which has been modified following an informal conference.

NOTE: Authority cited: Section 125.9, 148, and 6517, Business and Professions Code. Reference: Sections 125.9, 148, 6580, and 6583, Business and Professions Code.

§ 4608. Compliance with Citation.

The failure of a licensee to comply with a citation containing an assessment of administrative fine, an order of abatement or both an administrative fine and an order of abatement after the citation is final and has been served in accordance with the provisions of Section 11505(c) of the Government Code shall constitute a ground for revocation or suspension of a license.

NOTE: Authority cited: Sections 125.9, 148 and 6517, Business and Professions Code. Reference: Sections 125.9, 148, 6580 and 6583, Business and Professions Code.

§ 4610. Compliance with Order of Abatement.

(a) The time allowed for abatement of a violation shall begin the first day after the order of abatement has been served or received. If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the Bureau in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time specified in the citation shall constitute a violation and failure to comply with the order of abatement. Failure to timely comply with an order of abatement or failure to pay the fine included in the citation within the time allowed may result in disciplinary action being taken by the Bureau or other appropriate judicial relief being taken against the person cited.

NOTE: Authority cited: Sections 125.9, 148, and 6517, Business and Professions Code. Reference: Sections 125.9, 148, 6580 and 6583, Business and Professions Code.

Article 11. Enforcement

§ 4620. Substantially Related Criteria for License Suspension or Revocation.

For purposes of suspension or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a fiduciary if to a substantial degree it demonstrates present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to fiscal dishonesty or breach of fiduciary responsibilities of any kind.

NOTE: Authority cited: Sections 481 and 6517, Business and Professions Code. Reference: Sections 481, 490, 6580 and 6584, Business and Professions Code.

§ 4622. Rehabilitation Criteria for License Suspension or Revocation.

When considering the suspension or revocation of a license under Section 480 or 6536 of the Business and Professions Code, the Bureau, in evaluating the rehabilitation of the licensee and his or her present eligibility for a license, shall consider the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation which also could be considered grounds for suspension or revocation under Section 6584 of the Business and Professions Code.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (a) or (b).

(d) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(e) Evidence, if any, of rehabilitation submitted by the licensee.

NOTE: Authority cited: Sections 482 and 6517, Business and Professions Code. Reference: Sections 482, 6580, and 6584, Business and Professions Code.

§ 4624. Disciplinary Order.

For violations of Section 6584 of the Business and Professions Code which result in a disciplinary order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government Code against a professional fiduciary, the following provisions shall apply to disciplinary orders of the Bureau.

(a) The minimum disciplinary order shall be reproof. The maximum disciplinary order shall be revocation of the license.

(b) In those cases where suspension is warranted, the suspension shall be a minimum of thirty (30) days, unless otherwise noted.

(c) If warranted by extenuating and/or mitigating factors in the matter, the disciplinary order may be stayed by an express condition that the respondent comply with probationary

terms and conditions. The minimum time period in which the respondent shall have to comply with the probationary terms and conditions shall be two years. For purposes of this section, this time period shall be known as the "period of probation."

(d) All decisions containing stayed disciplinary orders as described in subdivision (b) shall include the following probationary terms and conditions:

(1) The respondent shall comply with all federal, state, and local laws, and all rules and regulations governing the practice of a professional fiduciary. A full and detailed account of any and all violations of law shall be reported by the respondent to the Bureau within seventy-two (72) hours of occurrence.

(2) The respondent shall comply with any court order including the payment of a fine or penalty imposed by a court order for any court action relating to any violation of duties of a professional fiduciary.

(3) During the period of probation the respondent shall comply with the terms and conditions of probation and demonstrate no cause for disciplinary action or denial of license.

(4) The respondent shall appear in person for scheduled interviews with the Bureau for purposes of monitoring compliance with the disciplinary order.

(5) The respondent shall submit reports to the Bureau, including criminal court probation reports and other reports as specified, upon requested by the Bureau relating to their duties as a professional fiduciary.

(6) The respondent shall submit specific records to the Bureau for inspection upon request by the Bureau.

(7) The respondent shall, at all times while on probation, maintain a current and active license with the Bureau, including any period during which suspension or probation is tolled. Should respondent's license, by operation of law or otherwise, expire, upon renewal respondent's license shall be subject to any and all terms of this probation not previously satisfied.

(8) If the respondent violates the probationary terms and conditions in any respect, the Bureau, after giving the respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against the respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Bureau shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.

(9) Following the effective date of the disciplinary order, if respondent is unable or unwilling to satisfy the terms and conditions of probation, respondent may voluntarily

request the surrender of his or her license to the Bureau. The Bureau reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within fifteen (15) calendar days deliver respondent's license certificate and pocket license to the Bureau and respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent's license shall be considered to be a disciplinary action and shall become a part of respondent's license history with the Bureau. Respondent may not petition the Bureau for reinstatement of the surrendered license. Should respondent at any time after voluntary surrender ever reapply to the Bureau for licensure, respondent must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational requirements, and taking and passing any and all examinations required of new applicants.

Surrender without the written consent of the Bureau shall not, during any period in which the license may be renewed, restored, reissued, or reinstated, deprive the Bureau of the authority to initiate or continue a disciplinary proceeding against respondent, or to enter an order suspending or revoking the license, or otherwise take disciplinary action.

(10) Upon successful completion of all of the probationary terms and conditions and the expiration of the period of probation, the respondent's license shall be unconditionally restored.

(e) All decisions containing stayed disciplinary orders as described in subdivision (b) may include one or more of the following probationary terms and conditions:

(1) Within thirty (30) days of the effective date of the decision, the respondent shall provide the Bureau with evidence that he or she has provided all persons or entities with whom he or she has a contractual or employment relationship such that the relationship is in the area of practice of a professional fiduciary in which the violation occurred with a copy of the decision and disciplinary order of the Bureau and shall provide the Bureau with the name and business address of each person or entity required to be so notified. During the period of probation, the respondent may be required to provide the same notification of each new person or entity with whom he or she has a contractual or employment relationship such that the relationship is in the area of practice of a professional fiduciary in which the violation occurred and shall report to the Bureau the name and address of each person or entity so notified.

(2) The respondent shall make restitution as ordered. The respondent shall provide verifiable proof to the Bureau that restitution has been paid as ordered. The probationary terms and conditions shall include a time period in which the verifiable proof shall be provided to the Bureau which time period shall be at least sixty (60) days less than the time period ordered for the period of probation.

(3) Respondents duties or services shall be limited as designated by the disciplinary order.

(4) In addition to the disciplinary order described in this section, all decisions shall address recovery of the Bureau's investigation and enforcement costs, as described in and authorized by Section 125.3 of the Business and Professions Code. The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay the investigation and enforcement costs.

(5) The respondent shall reimburse the Bureau the costs it incurs in monitoring the probation to ensure compliance for the duration of the period of probation.

(6) The respondent shall complete a remedial education program directly relevant to the violation as specified by the Bureau. The education program shall specify the areas and hours of education required and shall be completed within a designated time period. All course work shall be from an accredited educational institution or from an approved continuing education provider. Classroom attendance may be specifically required.

Within sixty (60) days of the effective date of the disciplinary order, respondent shall submit a plan for prior Bureau approval for meeting these educational requirements. The respondent shall provide proof of attendance and satisfactory completion of courses. Failure to satisfactorily complete the required program as scheduled shall constitute a violation of probation. All costs of the course work shall be paid by the respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

(f) Notwithstanding this section, non-conforming terms and conditions may be included as part of the disciplinary order, including such other further or lesser actions as the Bureau deems appropriate, in the interest of protecting the public health, safety, and welfare.

NOTE: Authority cited: Section 6517, Business and Professions Code; Section 11425.50(e), Government Code. Reference: Sections 125.3, 125.6, 480(a), 496, 6580 and 6584, Business and Professions Code; Sections 11425.50(e) and 11519, Government Code.